

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, October 31, 2001, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Mary Bills, Jon Carlson, Steve Duvall, Gerry Krieser, Patte Newman, Greg Schwinn, Cecil Steward and Tommy Taylor (Linda Hunter absent); Kathleen Sellman, Ray Hill, Jason Reynolds, Becky Horner, Brian Will, Tom Cajka, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Greg Schwinn called the meeting to order and requested a motion approving the minutes of the meeting held October 17, 2001. Bills moved approval, seconded by Newman and carried 7-0: Bills, Carlson, Duvall, Newman, Schwinn, Steward and Taylor voting 'yes'; Krieser abstaining; Hunter absent.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

October 31, 2001

Members present: Bills, Carlson, Duvall, Krieser, Newman, Schwinn, Steward and Taylor; Hunter absent.

The Consent agenda consisted of the following items: **CHANGE OF ZONE NO. 3343; SPECIAL PERMIT NO. 1839A; USE PERMIT NO. 128A; PRELIMINARY PLAT NO. 01013, ALDERWOOD; STREET AND ALLEY VACATION NO. 01016; and STREET AND ALLEY VACATION NO. 01019.**

Duvall moved to approve the Consent Agenda, seconded by Bills and carried 8-0: Bills, Carlson, Duvall, Krieser, Newman, Schwinn, Steward and Taylor voting 'yes'; Hunter absent.

Note: This is final action on Use Permit No. 128A, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

CHANGE OF ZONE NO. 3340
FROM R-1 RESIDENTIAL TO B-1 LOCAL BUSINESS
ON PROPERTY GENERALLY LOCATED
AT SO. 27TH STREET AND WOODS BOULEVARD.
ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 31, 2001

Members present: Newman, Duvall, Bills, Taylor, Steward, Carlson, Krieser and Schwinn; Hunter absent.

Carlson requested to ask questions of the Law Department. He continues to read the zoning code noting that this application would approve B-1 zoning and thus all uses allowed in the B-1 zoning district. Rick Peo of the City Law Department concurred. Carlson has heard past discussion on this Commission that some may favor this application because of the limited circumstances, the limited signage and the particular sign proposed. But there is no grounds for that limitation in the zoning ordinance and no enforcement ability to make that happen. Peo advised that for zoning purposes, "a change of zone is a change of zone". The size of the parcel probably affects what uses can be put on it. But outside of those types of limitations, "anything goes" as permitted by right in the district. The Planning Commission has limited authority. The Commission is acting upon a change of zone and nothing else.

In terms of precedence, Steward believes there is precedence for contracting with the property owner within a zone for certain circumstances that are pertinent only to that purpose. Peo agreed that contract zoning has been approved by the Supreme Court. In a sense, we have contract zoning within the Planned Unit Development (PUD) process and Community Unit Plan (CUP) process in the use permit districts and we sometimes require development agreements. Those are utilized because there is a standard procedure to follow as to the guidelines and conditions that can be imposed. Those development agreements provide a tracking mechanism for people to enforce the contractual relationship that has been agreed upon as part of the permit process and the agreement is recorded in the Register of Deeds. If we just have a covenant filed with the land or some contract exists, the Building & Safety Department might not be aware of that situation when a person comes to get a building permit. Therefore, the city has discouraged contract zoning because it is an enforcement problem and there is no standardized criteria as to the limitations and the process of how it is going to be handled. Peo believes that contract zoning per se defeats the purpose of zoning districts.

Bills noted that the property along side of the bank is currently zoned R-1. What prohibits them from selling that off and developing it into residences? Peo believes it looks like it was intended to be a buffer zone and there is probably not much practical ability for it to be used for residences. Bills also noted the shopping center to the south, the U-Stop and Woods Bros. Realty, so there is quite a bit of B-1 zoning in this location.

Motion #1. Duvall moved approval of the staff recommendation, which approves a change of zone to B-1 for the north 8' of the south 38' of the east 70' of Lot 39, seconded by Schwinn.

Bills asked for clarification of the motion made by Steward at a previous meeting. Steward explained that he had made a motion to approve the change of zone with an agreement regarding the signage. He was trying to find a solution for the particular circumstance because he believes what is being proposed gets rid of a pole sign and is an improvement. He believes the proposal is a relatively aesthetically pleasing signing solution without establishing a precedence of spot zoning for a particular circumstance. He believes that spot zoning sets a worse precedent than making a contract with the owner to limit what they can and cannot do. Steward acknowledged that he does not believe contract zoning is a necessarily good solution, and spot zoning has also happened, but this doesn't seem to be the rational zone structure solution.

Bills asked for clarification of the staff recommendation versus the motion previously offered by Steward. Tom Cajka of Planning staff clarified that the staff recommendation keeps the ground sign 30' back from the property line abutting South 27th St. Approval of the change of zone does not require that they install a ground sign. B-1 allows a ground or pole sign.

Bills stated that she has talked with the neighborhood association and they are fine with this as long as the monument sign is there and the pole sign comes down.

Ray Hill of Planning staff suggested that if the neighborhood group wants to enter into a private covenant with the landowner, then the neighborhood would be responsible to enforce the covenants and that could happen with this change of zone. A private covenant could be entered into between the neighborhood association and the property owner and it would be filed with the Register of Deeds. Once that is accomplished, the change of zone could be approved. The City would not be the enforcing agency. It would be between the landowner and the neighborhood association.

Carlson does not believe passing a motion with specific requirements does anything. The only record would be the minutes and there would be no way to enforce that. Only the minutes would show that that was even the intention. Even though we are trying to accommodate a sign, the issue in front of us is about zoning. Regardless of the merits of the ground sign versus the pole sign, Carlson believes that the mechanism we are trying to use is very, very poor. The Commission is here to judge things in light of the Comprehensive Plan, and the Comprehensive Plan does not call for contract or spot zoning. He does not believe it is in conformance with the plan and he believes it is poor policy and a large step to try to accommodate this proposal. He will vote against the motion.

Taylor commented that this is very difficult. As much as he is in favor of some forms of commercial signage, in this instance he finds it very difficult to support passing this zoning for this particular type of signage.

With regard to Bills' comment that the neighborhood association is in favor of this change of zone, Kathleen Sellman, Director of Planning, pointed out that the official record consists of a letter "in opposition" from the Country Club Neighborhood Association. There is nothing in the official record indicating that their position has changed.

Steward stated that he cannot support the motion as stated because he thinks that it sets the precedence for "slicing and dicing" the zoning characteristic to fit the particular situation. He does not believe that is what zoning laws and principles were set out to do. However, he does believe there should be a way to accommodate something that is an improvement over what exists, especially when both the community around it as well as civic judgment indicate that it is an improvement over the present situation. He is searching for a way to accommodate this improvement. He does not believe what is before the Commission is simply a zoning issue. He thinks it is a community improvement issue and this motion is not the way to accomplish that.

Schwinn agreed with Steward. The neighborhood association is probably against what was brought forward in form, and we have no guarantee that what is promised is what will be done. By the very nature of the way banks buy and sell each other, there is no guarantee that the next owner of this property will abide. However, Schwinn does agree that we need to find a way to accommodate situations like this. What is proposed by US Bank at this site would be far better than what is there and what we would like to see in the future in terms of signage. He will probably vote to deny in order to move this on to the City Council in hopes that they can figure something out to make it work.

Motion for approval of staff recommendation failed 2-6: Duvall and Krieser voting 'yes'; Newman, Bills, Taylor, Steward, Carlson and Schwinn voting 'no'; Hunter absent.

Motion #2. Carlson moved denial, seconded by Newman and carried 6-2: Newman, Bills, Taylor, Steward, Carlson and Schwinn voting 'yes'; Duvall and Krieser voting 'no'; Hunter absent.

There being no further business, the meeting was adjourned at 1:25 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on November 14, 2001.